

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP371-CR

STATE OF WISCONSIN

Cir. Ct. No. 1994CF943095

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LUEGENE ANTOINE HAMPTON,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JEFFREY A. WAGNER and JONATHAN D. WATTS, Judges. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Luegene Hampton, pro se, appeals orders amending a judgment of conviction as it relates to Hampton’s parole eligibility date and denying Hampton’s “motion for reconsideration and/or clarification.” Hampton argues that when his sentence was imposed in 1995, the circuit court erred by failing to set a specific day, month and year for his parole eligibility. Hampton further contends that the circuit court’s failure to set a date certain cannot be cured by simply amending the judgment but, rather, requires that either the sentence be commuted or that he be resentenced. We reject Hampton’s arguments and affirm the orders.

BACKGROUND

¶2 In January 1995, a jury found Hampton guilty of one count of first-degree intentional homicide.¹ Hampton’s crime was committed before the advent of Truth-in-Sentencing,² and it carried a mandatory sentence of life imprisonment. WIS. STAT. §§ 973.013, 940.01(1), 939.50(3)(a) (1993-94).³ At that time, the statute governing parole eligibility for those sentenced to life imprisonment read as follows:

Except as provided in sub. (2) [not applicable here], when a court sentences a person to life imprisonment for a crime committed on or after July 1, 1988, the court shall make a parole eligibility determination regarding the person and choose one of the following options:

¹ Hampton was also found guilty of one count of attempted first-degree intentional homicide and one count of armed robbery, both as party to a crime. The sentences he received for these counts are not at issue in this appeal.

² Truth-In-Sentencing became effective for offenses committed after December 31, 1999, and required imposition of determinate sentences. *See* 1997 Wis. Act 283.

³ All subsequent references to the Wisconsin Statutes refer to the 1993-94 version unless otherwise indicated.

(a) The person is eligible for parole under s. 304.06(1) [providing, in pertinent part, that “the parole commission may parole an inmate serving a life term when he or she has served 20 years...”].

(b) The person is eligible for parole on a date set by the court. Under this paragraph, the court may set any later date than that provided in s. 304.06(1), but may not set a date that occurs before the earliest possible parole eligibility date as calculated under s. 304.06(1).

WIS. STAT. § 973.014(1).

¶3 At Hampton’s sentencing on March 7, 1995, the State requested the court “set Mr. Hampton’s parole eligibility date at fifty-five to sixty years from today’s date.” The circuit court sentenced Hampton to life imprisonment, adding: “And as to your parole eligibility, the court is setting it at fifty years.” Hampton received 205 days of sentence credit. Upon his admission into the prison system in 1995, the Department of Corrections (“DOC”) calculated Hampton’s parole eligibility date as fifty years from the date of the sentencing hearing minus 205 days, giving Hampton a parole eligibility date of August 12, 2044.

¶4 Nineteen years after Hampton’s sentencing, the DOC informed the circuit court that during a recent file review, it discovered that the judgment of conviction had not “set a date” for parole eligibility but, rather, stated Hampton was sentenced to “life imprisonment with parole eligibility after 50 years.” The circuit court—apparently unaware that Hampton was entitled to 205 days of sentence credit—consequently amended the judgment of conviction to set his parole eligibility date at March 7, 2045—fifty years from the date of Hampton’s sentencing hearing.

¶5 Hampton moved for postconviction relief claiming the original sentence setting his parole eligibility at “50 years” was an illegally “extended”

sentence because it did not state a specific day, month, and year. Hampton therefore asserted that his parole eligibility date must be commuted to the statutory minimum of twenty years from the date of his sentence. Hampton alternatively sought resentencing. Hampton also claimed that the amended judgment of conviction setting his eligibility date at March 7, 2045, violated due process because it extended his imprisonment for almost a year past the date initially calculated by the DOC. The circuit court then amended the judgment of conviction to include the 205 days of sentence credit, as originally calculated by the DOC, thereby setting August 12, 2044, as Hampton's parole eligibility date.

¶6 Hampton moved for reconsideration, renewing his claims that the original parole eligibility date of "50 years" rendered his sentence illegal, requiring either commutation or resentencing. The circuit court denied the motion, and this appeal follows.

DISCUSSION

¶7 Construction of the parole eligibility statute and its application to undisputed facts are questions of law we determine independently. *State v. Carlson*, 2002 WI App 44, ¶6, 250 Wis. 2d 562, 641 N.W.2d 451. We give statutory language its common, ordinary, and accepted meaning. *See State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110.

¶8 Here, the statute provides that when a person is sentenced to life imprisonment, the circuit court must choose one of two parole eligibility options. The court has discretion to determine how long the person should be confined before becoming eligible for parole, provided the person serves at least twenty years. *See* WIS. STAT. § 973.014(1). If the circuit court determines more than

twenty years of confinement is appropriate, the defendant “is eligible for parole on a date set by the court.” Significantly, the statute does not specify that a date must be set forth in a format by day, month and year.

¶9 Citing *State v. Setagord*, 187 Wis. 2d 340, 523 N.W.2d 124 (Ct. App. 1994), Hampton contends the statute does not authorize a sentencing court to set parole eligibility with a term of years. Hampton’s reliance on *Setagord*, however, is misplaced. There, we recounted that pursuant to WIS. STAT. § 973.014, the court could choose only one of two options: (1) parole eligibility under WIS. STAT. § 304.06(1); or (2) parole eligibility “on a date set by the court.” *Id.* at 342. We reversed the judgment and remanded the matter for resentencing because the circuit court did not choose one of the available options but, rather, imposed a life sentence without parole. *Id.*

¶10 When, on remand, the sentencing court set a parole eligibility date of October 21, 2091, both this court and our supreme court affirmed, concluding the circuit court did not erroneously exercise its discretion in setting a date far beyond Setagord’s anticipated life span. See *State v. Setagord*, No. 1995AP207-CR, unpublished slip op. (WI App July 11, 1996); *State v. Setagord*, 211 Wis. 2d 397, 402, 565 N.W.2d 506 (1997). Contrary to Hampton’s assertion, the *Setagord* cases did not directly address nor mandate the manner in which a sentencing court should set a parole eligibility date under WIS. STAT. § 973.014(1)(b). In the instant case, the sentencing court’s determination that Hampton was eligible for parole after fifty years complies with § 973.014(1)(b) because setting a term of years is a method of setting a date—especially where, as here, the specific parole eligibility date was readily ascertainable from the record.

¶11 Even assuming the subject statute contemplates the sentencing court stating a specific day, month, and year, any error by the sentencing court was merely technical and was appropriately corrected by entry of an amended judgment of conviction setting an August 12, 2044 parole eligibility date. Hampton is not prejudiced because the amended judgment imposed a parole eligibility date identical to the date originally calculated by the DOC and consistent with the sentencing court's stated intent.

¶12 Hampton nevertheless contends that because his sentence is "void," it should be commuted to set a parole eligibility date at the statutory minimum of twenty years. We disagree. Hampton's sentence was not rendered invalid or void by what was, at most, a technical error. If Hampton's interpretation of the statute is correct, the circuit court merely used the wrong phrase to explain the parameters of the sentence. The circuit court, therefore, appropriately remedied any error with a simple mathematical conversion of the term of years to a date certain. To commute the sentence as Hampton suggests would make him eligible for parole thirty years earlier than the sentencing court intended. As the circuit court recognized, commutation is a wholly inappropriate remedy for the alleged error committed here.

¶13 Hampton alternatively seeks resentencing, which is generally the method of correcting a legally invalid sentence. *See Grobarchik v. State*, 102 Wis. 2d 461, 470, 307 N.W.2d 170 (1981). As noted above, Hampton's sentence was not rendered invalid by the claimed error, and the sentencing court's dispositional scheme remained intact after correction of the judgment of conviction. Therefore, resentencing is not warranted.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5. (2015-16).

